

LEGAL EAGLE EYE NEWSLETTER

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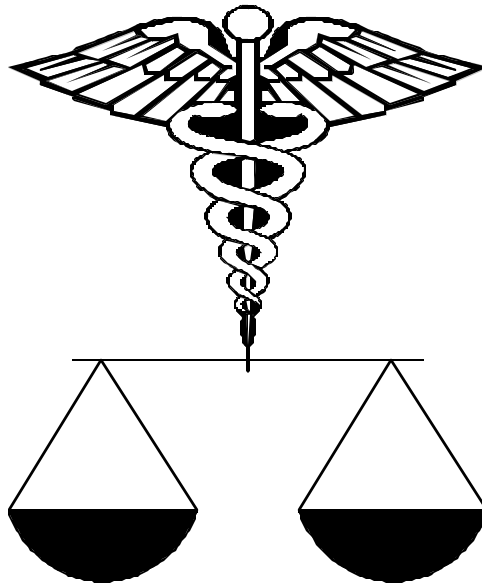
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HIV Test - No Patient Consent: Nurse Not Responsible For Lab Misreading Order.

Healthcare professionals and facilities may not test a patient for HIV without the patient's actual consent, expressed verbally or in writing, the Court of Appeals of Ohio has ruled.

However, for a patient to be able to maintain a civil lawsuit for damages against a professional or facility which does such a test without the patient's expressed consent, the patient must be able to demonstrate in court that there has been an intentional violation of the patient's rights. If the test was carried out due to a misunderstanding or miscommunication as to what tests were being ordered, and there was no intention to test the patient for HIV against the patient's wishes, no civil liability will be imposed, the court ruled.

In this case a patient, who had known for three years that he was HIV positive, came to the hospital emergency room with abdominal pain. He stated he was under the care of a physician in an outpatient clinic at the hospital for kidney stones. The ER staff determined his pain was most likely related to the kidney stones, and told him to see his physician in the outpatient clinic the next morning, which he did. His physician scheduled him for lithotripsy to dissolve the stone.



For a healthcare professional to be liable in a civil lawsuit for testing a patient for HIV without consent, the patient must prove his or her rights were intentionally disregarded.

In this case the lab simply mistook the nurse's notation on the lab slip, that the patient was already known to be HIV positive, as an order to run an HIV test on the blood sample.

COURT OF APPEALS OF OHIO, 1995.

Before this procedure, the physician wrote an order for a standard CBC and potassium level. A nurse, in transcribing the physician's order to a lab slip, made a note, at the patient's suggestion, that the patient was known to be HIV positive, because the patient wanted to alert the lab to be cautious in handling his blood.

The nurse's note, however, was interpreted by the lab as an order for an HIV test. The lab tested the sample for HIV, and communicated the positive result to the state department of health. The patient strongly objected, after the fact, when he found out his blood had been tested. The patient then sued for damages in civil court.

The court ruled that state law explicitly prohibits a healthcare facility or professional from *knowingly* ordering an HIV test without the patient's informed consent. Consent may be communicated either verbally or in writing. However, in this case, there was a mix-up in communication between the nurse who wrote the lab slip and the lab itself. In the court's judgment, this did not amount to intentional violation of the patient's right not to be tested for HIV without his consent. "John Doe" vs. Ohio State University Hospitals and Clinics, 663 N.E. 2d 1369 (Ohio App., 1995).

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